

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.559 of 2007.

Date of decision: 8.8.2007.

State of H.P.

..... Petitioner

Vs.

Lekh Raj and others

.... Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting? No

For the petitioner : Mr. Ashok Chaudhary, Addl. Advocate General.

For the Respondents : None.

Kuldip Singh, Judge (Oral)

The State has filed this petition, seeking leave to appeal against the judgment of acquittal dated 30.5.2006, passed by learned Judicial Magistrate Ist Class, Nadaun, Distt Hamirpur, in CrI. Case No.53-II-2002, RBT No.15-II-2003 under Sections 325, 323, 504 read with Section 34 IPC.

The prosecution case is that complainant Bhagwani Devi was coming back to her house from her fields and when she reached place Dhanon, she saw that accused were cutting tree which had fallen and lying on the road. The Forest Department had asked the parties to first take the demarcation. The complainant asked the accused not to cut and remove the tree, on this accused hurled abuses to her. Lekh Raj and other

Whether the reporters of the local papers may be allowed to see the Judgment? Yes

accused gave her beatings with hand and fist blows, Sarvan Kumar gave her beatings with danda. As a result of which, she received injuries. She was rescued by Dev Raj and Leela Devi. The matter was reported to the police and accordingly FIR Ex.PW 12-A was registered against the accused persons. The complainant was got medically examined from doctor vide MLC Ex.PW 7/A. Danda Ex.P-1 was produced by Sarvan Kumar before the police. The accused were tried for commission of offence under Sections 323, 325, 504 read with section 34 IPC.

PW-1 Dev Raj has deposed that in his presence on 20.4.2002 at about 7.30 a.m. accused were trying to remove the tree which was lying on the road. In the meantime Bhagwani Devi came there, she hurled abuses on them and accused also hurled abuses to her and scuffle took place, thereafter, he left the spot. Leela Devi appeared as PW-2 and she put the same story as revealed by PW-1. PW-1 and PW-2 were cross-examined by the prosecution as they did not support the prosecution.

Bhagwani Devi has appeared as PW-3 and has stated that she does not remember date, month and year, however, it was 7.30 a.m. She has stated that a Peepal tree was lying on the road, which had caused obstruction. She with the help of the other persons kept the same on the other side. After 5/6 months, accused tried to cut the tree and when she stopped them from doing so they hurled abuses and Sarvan Kumar gave her beatings with danda on her leg. She was saved by Leela Devi and Dev Raj. In cross-examination, she has stated that police had taken into possession danda which she had produced before the police on the spot. She admitted that medical examination of accused Lekh Raj was also got conducted at the place where her medical examination was conducted.

Parkash Chand PW-4 has deposed that the accused Sarvan Kumar produced danda Ex.P-1 before the police. Suresh Kumar PW-5 has deposed that on 20.4.2002, he heard the cries of his mother and when he reached there, he saw that accused Lekh Raj was giving beatings to his mother and she was lying unconscious on the spot, Sarvan gave danda blow on the left leg of his mother. In his cross-examination he has stated that Mohinder Chand, Balwant Raj and Dev Raj removed the tree from the path. He has further stated that when he reached the spot the quarrel was over. He has admitted that Lekh Raj accused had also received injuries and his medical examination was got conducted. Sub Inspector Des Raj has appeared in the witness box and has stated that Ex.P-1 was taken into possession on 30.4.2002 whereas PW-4 Parkash Chand has stated that the danda Ex.P-1 was produced before the police after 10 days of the quarrel.

The alleged eye witnesses PW-1 Dev Raj and PW-2 Leela Devi have not supported the prosecution case. The statement of Bhagwani Devi complainant has not been corroborated by other witnesses. PW-5 Suresh Kumar son of Bhagwani Devi has stated that when he reached the spot, the quarrel was already over. It has come on record that Lekh Raj accused also sustained injuries but those have not been explained. The recovery of Ex.P-1 is also not clear. There are material contradictions, the trial Court has rightly appreciated the material on record and acquitted the accused persons. No case is made out for granting leave to appeal. Hence, petition is dismissed.

(Kuldip Singh)
Judge

August 8, 2007(sks)

